

1981 Senate Bill 681

Date published: April 26, 1982

CHAPTER 261 , Laws of 1981

AN ACT to create 700.40 and 893.33 (6m) of the statutes, relating to conservation easements.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 700.40 of the statutes is created to read:

700.40 Uniform conservation easement act. (1) DEFINITIONS. In this section, unless the context otherwise requires:

(a) "Conservation easement" means a holder's nonpossessory interest in real property imposing any limitation or affirmative obligation the purpose of which includes retaining or protecting natural, scenic or open space values of real property, assuring the availability of real property for agricultural, forest, recreational or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological or cultural aspects of real property.

(b) "Holder" means either of the following:

1. Any governmental body empowered to hold an interest in real property under the laws of this state or the United States.

2. Any charitable corporation, charitable association or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic or open space values of real property, assuring the availability of real property for agricultural, forest, recreational or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological or cultural aspects of real property.

(c) "Third-party enforcement right" means a right provided in a conservation easement empowering a governmental body, charitable corporation, charitable association or charitable trust, which, although eligible to be a holder, is not a holder, to enforce any term of the easement.

(2) CREATION, CONVEYANCE, ACCEPTANCE AND DURATION. (a) Except as otherwise provided in this section, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated or otherwise altered or affected in the same manner as any other easement.

(b) No right or duty in favor of or against a holder and no right in favor of a person having a 3rd-party enforcement right arises under a conservation easement prior to its acceptance by that holder and recordation of that acceptance.

(c) Except as provided in sub. (3) (b), a conservation easement is unlimited in duration unless the conservation easement otherwise provides.

(d) No conservation easement may impair an interest in real property existing at the time the conservation easement is created, unless the owner of that interest is a party to the conservation easement or consents to it.

(3) ACTIONS. (a) An action affecting a conservation easement may be brought by any of the following:

1. An owner of an interest in the real property burdened by the conservation easement.
2. A holder of the conservation easement.
3. A person having a 3rd-party enforcement right.
4. A person authorized by other law.

(b) This section does not affect the power of a court to modify or terminate a conservation easement in accordance with any principle of law or equity.

(4) VALIDITY OF CONSERVATION EASEMENT. A conservation easement is valid even though any of the following apply:

- (a) It is not appurtenant to an interest in real property.
- (b) It can be or is assigned to another holder.
- (c) It is not of a character recognized traditionally at common law.
- (d) It imposes a negative burden.
- (e) It imposes affirmative obligations upon the owner of any interest in the burdened property or upon the holder.
- (f) The benefit does not touch or concern real property.
- (g) There is not privity of estate or of contract.

(5) EFFECT ON ENFORCEABLE INTERESTS. Nothing in this section invalidates any interest, whether designated as a conservation easement, covenant, equitable servitude, restriction, easement or otherwise, which is otherwise enforceable under the laws of this state.

(6) **UNIFORM APPLICATION AND CONSTRUCTION.** This section shall be applied and construed so as to make uniform the laws relating to conservation easements among states enacting substantially identical laws.

SECTION 2. 893.33 (6m) of the statutes is created to read:

893.33 (6m) This section does not apply to any interest in a conservation easement under s. 700.40.

SECTION 3. Initial applicability. The treatment of sections 700.40 and 893.33 (6m) of the statutes by this act applies to:

(1) Any interest created after the effective date of this act which complies with section 700.40 of the statutes, whether designated as a conservation easement, covenant, equitable servitude, restriction, easement or otherwise.

(2) Any interest created prior to the effective date of this act which would have been enforceable if created after the effective date, unless retroactive application contravenes the constitution or laws of this state or of the United States.
